

## **FINAL STATEMENT OF REASONS:**

The California Department of Corrections and Rehabilitation (CDCR) proposes to amend Sections 3000, 3040, 3041 3043, 3043.3, 3043.4, 3043.5, 3043.6, 3044, 3045, 3045.1, 3045.2, 3045.3, 3075, and to adopt Section 3040.2 of the California Code of Regulations (CCR), Title 15, Division 3, concerning bridging education, inmate credit earning, inmate work/training incentive groups, excused time off, and timekeeping and reporting.

The former California Department of Corrections (CDC), which pursuant to Senate Bill 737, was abolished and reorganized as part of the newly created CDCR, was directed by the Fiscal Year 2003/2004 Budget Act to provide education programming for Penal Code (PC) Section 2933 day-for-day credit eligible inmates in Reception Centers (RC), and to also expand the existing education programs within the General Population (GP) institutions. In addition, the 2003/2004 Budget Act mandated the priority hiring of day-for-day credit eligible inmates within the GP institutions.

To expand the educational opportunities for these day-for-day credit eligible inmates, the former CDC incorporated new modifications and programs for the GP institutions, effective November 1, 2003, and also for the RCs, effective February 15, 2004. Included in these programs are education assessment, anger management, cognitive based re-entry orientation, life skills, and integration into the Arts in Corrections programs.

These proposed regulations are necessary in order to establish regulations specifically related to the bridging education program (BEP), and to update language concerning inmate credit earning, inmate work/training incentive groups, "S" time, and excused time off. Also, due to the elimination of the CDC Form 191, Inmate Timecard, language concerning timekeeping and reporting has been revised.

These regulations also include additional changes that were made to the originally proposed text. After the initial notification, it was discovered that ten references in these regulations still referred to the abolished positions of the former CDC Director and Deputy Director, Institutions Division. To reflect the correct organization and authority structure of the CDCR, non-substantive text changes have been made that replace the titles of the former CDC Director and Deputy Director, Institutions Division, with the Secretary of the CDCR, and the Director, Division of Adult Institutions, respectively.

The Department has determined that no reasonable alternatives to the regulations have been identified or brought to the attention of the Department that would lessen any adverse impact on small business.

The Department has determined that the facts, evidence, documents initially identified in the Initial Statement of Reasons support an initial determination that the action will not have a significant adverse economic impact on business. Additionally, there has been no testimony or other evidence provided that would alter the Department's initial determination.

The Department did not make an initial determination in the Initial Statement of Reasons as to whether adoption, amendment, or repeal of the regulation

imposes a mandate on local agencies or school districts. However, the Department has determined that this action imposes no mandates on local agencies or school districts, or a mandate, which requires reimbursement pursuant to Part 7 (Section 17561) of Division 4.

### **3000. Definitions.**

**Section 3000. The definition of program failure is amended** to clarify language concerning the 180 day time period in which an inmate may be considered a program failure. This change is necessary because prior language was confusing and subject to different interpretations of when time frames began and stopped. Amended language will reflect that an inmate will have shown reasonable evidence of a significant disciplinary history, and may be considered a program failure, if they have a guilty finding for two serious Rules Violation Reports or one serious and two administrative Rules Violations Reports within 180 consecutive days from the current date of review. This change will ensure that an action/sanction against an inmate for program failure, be immediate, and only take into account the current 180 day time period in which the inmate still meets the criteria. It also prevents a future committee review from going back in time and using against the inmate any prior 180 day period in which the inmate did meet the program failure criteria.

### **3040. Participation**

**Subsection 3040(a) is amended.** To correctly reference the organization and authority structure of the CDCR, a non-substantive change to the text has been made by deleting the “Director of Corrections” and replacing it with the “Secretary of the Department of Corrections and Rehabilitation.” This is an additional change to the originally proposed text.

**Subsection (b) is unchanged.**

**Subsection 3040(c) is amended** for clarification by including Sections 3040.2(d) and 3040(e) as the exceptions to when a classification committee shall assign an inmate to a work, education, vocation, therapeutic, or other institution program.

**Subsection 3040(d) is unchanged.**

**Subsection 3040(e) is amended** by deleting incorrect language concerning the earning of “S” time. This change is necessary because “S” time is no longer earned or credited, but is instead approved for the reasons that are outlined in subsection 3045.3(b).

**Subsections 3040(f) through (l) are unchanged.**

### **3040.1. Substance Abuse Program for Inmates.**

**Section 3040.1 is unchanged.**

**New Section 3040.2 is adopted.**

### **3040.2. Bridging Education Program.**

**New subsection 3040.2(a) is adopted** to include that each prison will establish BEPs as work/training incentive assignments in order to provide education programming for inmates who are day-for-day credit eligible per PC Section 2933. New language will specify that inmates, who are undergoing reception center processing and are day-for-day credit eligible, will be assigned to the BEP upon their arrival to the reception center. In addition, day-for-day credit eligible inmates who are housed in general population institutions will be eligible to be assigned to a BEP.

**New subsection 3040.2(b) is adopted** to specify the criteria by which participation in a BEP will be evaluated, and to also establish that an assignment to an approved BEP shall qualify as a full-time assignment in Work Group A-1.

**New subsection 3040.2(c) is adopted** to specify the case factors that will preclude an inmate from being placed in a BEP. This is necessary in order to clarify which inmates will not be eligible for placement in a BEP.

**New subsection 3040.2(d) is adopted** to establish that the reception center Inmate Assignment Officer shall have the authority to initiate a classification action and affect a work/training group change in order to assign inmates to reception center BEPs. Also, when taking such an action, the notification and classification procedural safeguards as described in sections 3375(e) and (f) of these regulations shall not be required. This change does not impact the inmate in any negative way, and is necessary in order to expedite the process that will allow day-for-day credit eligible inmates, who are undergoing reception center processing, to be assigned to a BEP and immediately begin to earn day-for-day credit.

**New subsection 3040.2(e) is adopted** to clarify that general population inmates may be assigned to a BEP following a classification committee review. In addition, a non-substantive change was made to the originally proposed text by changing the upper case "S" to lower case "s" on the word "section." This change corrects an oversight from the original text, and maintains consistency with the other references to "section" in these regulations.

**New subsection 3040.2(f) is adopted** to clarify that a classification committee action shall not be required to remove inmates from BEPs if no other changes in work/training group, custody designation, or a work waiting list is required.

### **3041. Performance**

**Subsections 3041(a) through (b) are unchanged.**

**Subsection 3041(b)(1) is amended** by deleting the reference to time "cards" and replacing it with "timekeeping" logs. With the elimination of the CDC Form 191, Inmate Timecard, any language in these regulations referencing the CDC Form 191, or any other specific form that is used to record the daily attendance of an inmate in a credit qualifying assignment, has been amended to now reflect, for easier reference and consistency, a "timekeeping log".

**Subsections 3041(b)(2) through (e) are unchanged.**

### **3043. Credit Earning**

**Subsection 3043(a) is unchanged.**

**Subsection 3043(a)(1) is amended** by adding clarifying language related to sentencing laws.

**Subsections 3043(b) through (c)(3) are unchanged.**

**Subsection 3043(c)(4) is amended** by adding clarifying language related to sentencing laws.

**Subsection 3043(c)(5) is amended** for correction purposes by deleting the reference to work/training supervisors. This is necessary because work/training supervisors no longer submit timekeeping documents to case records staff.

**Subsection 3043(c)(5)(A) is unchanged.**

**Subsection 3043(c)(5)(B) is amended** to delete language concerning the computation of worktime credits at six-month intervals. This is necessary because six-month time gain computations are no longer performed due to the elimination of the CDC Form 191.

**Subsection 3043(d)(1) is amended** by adding life inmates sentenced under PC Sections 191.5(d) and 667.51(d) to the list of life inmates who can have worktime credits applied in order to reduce their minimum terms. This is necessary in order to provide the relevant PC Sections that have become effective since the last revision to this regulation.

**Subsections 3043(d)(2) through (f) are unchanged.**

**Subsection 3043(g) is amended** by adding the Western Interstate Corrections Compact and the Interstate Corrections Compact Agreement to the language concerning credits for interstate transfer inmates. This is necessary in order to clarify the authority that enables the Department to transfer and exchange prisoners with other states.

**Subsection 3043(g)(1) is amended** to clarify language concerning the application of worktime credit for inmates serving their term in another state, federal institution, or who are serving a concurrent term in another jurisdiction.

**Subsections 3043(g)(2) through (h)(3) are unchanged.**

**Sections 3043.1 and 3043.2 are unchanged.**

### **3043.3. Loss of Behavior or Worktime Credit.**

**Subsections 3043.3(a) through (a)(3) are unchanged.**

**Subsection 3043.3(a)(4) is amended** to specify that not more than 30 days of worktime credit shall be denied or forfeited for any “single” act described as a serious rule violation in these regulations unless the act is a misdemeanor or felony offense. Because of the possibility that more than one act can occur at a time, resulting in multiple disciplinary reports and a possible credit loss of more than 30 days, the reference to “single” act is necessary for clarification. Also, the reference to Section 3315 has been deleted so that the description of a serious rule violation is inclusive of all of these regulations, not just limited to Section 3315.

**Subsections 3043.3(a)(5) through (c) are unchanged.**

#### **3043.4. Non-Credit Earning**

**Subsection 3043.4(b) is deleted. With the deletion of 3043.4(b), subsection 3043.4(a) is renumbered to 3043.4 and amended** to clarify when an inmate, who is eligible to earn worktime credit but has refused a full-time qualifying assignment, or is placed on non-credit earning status, can receive a worktime credit reduction. Amended language will reflect that once an inmate does “agree to” accept a full-time qualifying assignment, they will be eligible to receive a worktime credit reduction.

**Subsection 3043.4(b) is deleted** to remove incorrect language concerning denied worktime credit for absent days. This is necessary because individual absent days, or any amount of absent time, will not preclude an inmate from earning worktime credit for that day, and unless there is a change by a classification committee, inmates will continue to earn worktime credit that is commensurate with their assigned work group.

#### **3043.5. Credit Earning Special Assignments.**

**Subsections 3043.5(a) through (a)(2) are unchanged.**

**New subsection 3043.5(a)(3) is adopted** to establish a BEP as a credit earning special assignment. Language will specify that assignment to an approved BEP as described in Section 3040.2 shall qualify as a full-time assignment in Work Group A-1.

**Subsection 3043.5(b) is unchanged.**

**Subsections 3043.5(b)(1) and (b)(2) are amended** to establish a new starting date when general population inmates, and segregation inmates who are in Work Group A-1 or B, can be placed in a different work group because of a short-term medical/psychiatric inpatient hospitalization that will require a longer period of inpatient care (more than 29 calendar days). For those short-term inmates who require a longer period of inpatient care, the attending physician/psychiatrist refers the inmate to a classification committee, which in turn confirms the inmate’s unassigned inpatient category and changes the work/training group status. Previously, before a work group change would occur, the inmate would first utilize and exhaust their accrued excused time off

(ETO). Because inmates no longer earn and accrue ETO, it is now necessary to establish a new starting date for a work group change. Amended language in subsection 3043.5(b)(1) now provides that effective “the thirtieth day of unassignment,” general population inmates shall be placed in Work Group A-2, and Subsection 3043.5(b)(2) provides that effective “the first day of placement into Administrative Segregation”, segregation inmates who are in Work Group A-1 or B shall be placed in Work Group D-1.

**Subsections 3043.5(b)(3) and (c) are unchanged.**

**Subsections 3043.5(c)(1) and (c)(2) are amended** to establish a new starting date for a work group change for inmates who are long-term medical/psychiatric unassigned status, and their health condition necessitates that they become medically unassigned for 30 calendar days or more. When this occurs, the physician will specify an anticipated return date. A classification committee will then review the inmate’s unassigned status and change the work group. Previously, before a work group change would occur, the inmate would first utilize and exhaust their accrued ETO. Because inmates no longer earn and accrue ETO, a new effective starting date now needs to be established. Amended language in subsection 3043.5(c)(1) will now specify that an inmate in the general population shall be changed to Work Group A-2, involuntary unassigned, effective “the thirtieth day of unassignment”. Additionally, subsection 3043.5(c)(2) specifies that an inmate in a lockup unit who is in Work Group A-1 or B shall be changed to Work Group D-1 effective “the first day of placement into Administrative Segregation.”

**Subsection 3043.5(c)(3) is unchanged.**

**Existing subsection 3043.5(d) is renumbered to 3043.5(e).**

**New subsection 3043.5(d)** provides for clarification, the process that is used to determine the program assignment and work group status for an inmate who has a determinable physical or mental impairment which limits his/her ability to participate in a work, academic, vocational, or other such program. New language will specify that the classification committee shall have the sole responsibility for making program assignment and work group status decisions. These decisions shall be based on information received from medical/psychiatric staff in addition to the feedback received from the affected work area, academic/vocational program staff, and the Inmate Assignment Lieutenant or Work Incentive Coordinator. If a disabled inmate is unable to perform the essential functions of any of the above described programs, even with reasonable accommodation, he/she will be placed in one of two possible categories and a corresponding Work Group.

Temporary medical/psychiatric unassignment. If an inmate’s physical or mental impairment is expected to last for less than six months, the classification committee shall place the inmate on temporary medical/psychiatric unassignment and Work Group A-2 credit earning status. If at six months, the classification committee still cannot assign the inmate due to his/her condition,

then the credit earning status shall be changed to Work Group A-1 with the appropriate privilege group, retroactive to the first day of the temporary medical/psychiatric unassignment.

Medically disabled. If the inmate's condition is expected to result in death or last six months or more, the classification committee shall place the inmate on medically disabled status along with the credit earning status of Work Group A-1 and Privilege Group A.

Included in this Subsection is a non-substantive change to the originally proposed text that referenced the CDC Form 128-C. To correctly reference the form, the form date and title were added.

**Existing subsections 3043.5(d) through (d)(2)(B) are renumbered to 3043.5(e) through (e)(2)(B) and are unchanged.**

**Existing subsections 3043.5(d)(2)(B)(1) and (d)(2)(B)(2) are renumbered to 3043.5(e)(2)(B)(1) and (e)(2)(B)(2) and are deleted** in order to remove incorrect language concerning the deduction of ETO in the calculation of time credits. This is necessary because inmates no longer earn and accrue ETO.

**Existing subsection 3043.5(d)(2)(C) is renumbered to 3043.5(e)(2)(C) and is unchanged.**

**Existing subsection 3043.5(d)(2)(D) is renumbered to 3043.5(e)(2)(D) and is amended** by deleting the reference of "earn" ETO and replacing it with "use" ETO. This is necessary because inmates no longer earn and accrue ETO, but instead will use ETO that is authorized.

**Existing subsections 3043.5(e), (f), and (g) are renumbered to 3043.5(f), (g), and (h) respectively and are unchanged.**

### **3043.6. Impact of Transfer on Credit Earning**

**Subsections 3043.6(a) through (a)(2) are unchanged.**

**Subsection 3043.6(a)(3) is amended** to clarify the process by which a transferred inmate is merged into a receiving institution's waiting list, and to also establish the prioritization for assignment for PC Section 2933 credit eligible inmates. Amended language will specify that an inmate who is transferred for non-adverse reasons, and who was in a vocational/training program at the sending institution, shall be assigned the same or similar program, "if eligible," at the receiving institution unless the program has no vacancy or is unavailable. If the receiving institution's program is full or unavailable, the transferred inmate shall be placed on any existing waiting list at the receiving institution and merged based on credit earning status, release date, and length of time on the sending institution's waiting list. Inmates who are PC Section 2933 day-for-day credit eligible shall be given priority for assignment.

**Subsection 3043.6(a)(4) is deleted** to remove obsolete language concerning the granting of time credits. This is necessary because inmates, who are

transferred for non-adverse reasons, now retain their work/training and privilege group status and continue to earn credits that are commensurate with that work group. Because inmates have continued credit earning, the granting of time credits for a period of program interruption is no longer performed.

**Existing subsection 3043.6(a)(4)(A) is renumbered to 3043.6(a)(3)(A) and amended** to clarify which inmates will have first priority for placement on the receiving institutions waiting list. Amended language will specify that for those inmates who are merged into the waiting list, the day-for-day credit eligible inmates approved for the program and not assigned Work Group A-2, shall be given priority on the waiting list with the inmate with the earliest release date given first priority.

**Existing subsection 3043.6(a)(4)(B) is renumbered to 3043.6(a)(3)(B) and amended** to clarify which inmates will be given second priority placement on the receiving institutions waiting list. For those inmates who are merged into the waiting list, the day-for-day credit eligible inmates who are already designated Work Group A-1, shall be given the next priority, with the inmate with the earliest release date given first priority in this group.

**New subsection 3043.6(a)(3)(C) is adopted** to clarify which inmates will be given third priority placement on the receiving institution's waiting list. New language will specify that inmates who are not PC Section 2933 day-for-day credit eligible, and are already designated Work Group A-1, will be placed on waiting lists based upon the work group effective date.

**New subsection 3043.6(a)(3)(D) is adopted** to clarify which inmates will be given fourth priority on the receiving institution's waiting list. New language will specify that inmates who are not PC Section 2933 day-for-day credit eligible, and are not assigned Work Group A-2, will be placed on waiting lists based upon the work group effective date.

**Existing subsection 3043.6(d)(1) is renumbered to 3043.6(d)(2).**

**New subsection 3043.6(d)(1)** clarifies who is eligible for a reception center BEP. New language will specify that inmates, who are being processed in reception centers, not on layover (en route) status, who are eligible to earn day-for-day credit, are eligible to be assigned to a full-time BEP.

**Existing subsection 3043.6(d)(1) is renumbered to 3043.6(d)(2) and amended** to clarify the work/training program that is available to those reception center inmates who are not day-for-day credit eligible. Amended language will reflect that inmates who are being processed in a reception center, and are ineligible to earn day-for-day credits per PC Section 2933, can be assigned to a half-time work/training program. In addition, to correctly reference the organization and authority structure of the CDCR, a non-substantive change to the text has been made by deleting the reference to the "Deputy Director, Institutions Division", and replacing it with the "Director, Division of Adult



Institutions.” This non-substantive change is an additional amendment to the originally proposed text.

**Existing subsection 3043.6(d)(2) is renumbered to new subsection 3043.6(d)(3) and amended** for consistency by deleting the word “form” and replacing it with “timekeeping logs.” Amended text will also specify that the timekeeping log shall be completed by the work supervisor “on a daily basis.” Also for clarification, the text “an inmate’s work on a half-time assignment” has been changed to “an inmate’s participation in a full or half-time assignment.”

**Subsections 3043.6(e) and (f) are unchanged.**

#### **3044. Inmate Work and Training Incentive Groups.**

**Subsection 3044(a) is unchanged.**

**Subsection 3044(b) is amended** to include the reference of newly adopted subsection 3040.2(d), which specifies that the Inmate Assignment Officer shall have the authority to initiate a classification action to assign inmates to a reception center BEP, and when taking such action, a classification committee action is not required. This is necessary in order to remove any conflict between subsections 3044(b) and 3040.2(d) of these regulations.

**Subsection 3044(b)(1) is unchanged.**

**Subsection 3044(b)(2) is amended** to clarify Work Group A-1, which is a full-time work/training assignment, by specifying that inmates eligible to earn PC Section 2933 worktime credits for a full-time work/training assignment, shall be awarded one day credit for each day “assigned to this work group.” This corrects previous language that referenced one day credit for each day “of qualifying performance.” A correction has also been made to reflect that the work day shall be no less than 6.5 hours and the work week no less than 32 hours. In addition, because of the elimination of the CDC Form 191, the last sentence referencing the inmate timecard has been changed to reflect timekeeping logs.

**Subsections 3044(b)(2)(A) and (B) are unchanged.**

**Subsection 3044(b)(2)(C) is amended** for correction purposes by adding an apostrophe to the word “bachelors”.

**Existing subsection 3044(b)(2)(D) is renumbered to 3044(b)(2)(E).**

**New subsection 3044(b)(2)(D) establishes** the BEP as a Work Group A-1, full-time work/training assignment, and also specifies how participation in the program will be evaluated.

**Existing subsection 3044(b)(2)(D) is renumbered to 3044(b)(2)(E) and is amended** for correction purposes by changing Work Group “A” to “A-1.”

**Existing subsection 3044(b)(2)(E) is renumbered to 3044(b)(2)(F) and is unchanged.**

**Subsections 3044(b)(3) through (b)(3)(B) are unchanged.**

**Subsection 3044(b)(4) is amended** for correction purposes by adding an apostrophe to the word “bachelors.”

**Subsections 3044(b)(5)(A) and (B) are unchanged.**

**Subsection 3044(b)(6) is amended** to add clarity to the definition of segregated housing.

**Subsections 3044(b)(7) through (b)(7)(C) are unchanged.**

**Subsection 3044(b)(8) is amended** for clarification by specifying the one exception to Work Group U credit earning. Usually, each inmate who is undergoing reception center processing is put into Work Group U, unclassified status, and is granted one day credit for each two days served. The exception to this, and included in the amended language, is the inmate who is assigned to a full-time BEP.

**Subsection 3044(c) is amended.** To correctly reference the organization and authority structure of the CDCR, a non-substantive change to the text has been made by deleting the reference to the “Director” and replacing it with the “Secretary” of the CDCR. This is an additional change to the originally proposed text.

**Subsections 3044(c)(1) through (c)(6) are unchanged.**

**Subsection 3044(c)(6)(A) is amended** for clarification purposes by adding the word “assigned” to the reference of housing unit.

**Subsections 3044(c)(6)(B) through (d)(3)(B) are unchanged.**

**Subsection 3044(d)(3)(C) is amended.** To correctly reference the organization and authority structure of the CDCR, a non-substantive change to the text has been made by deleting the reference to the “Director” and replacing it with the “Secretary” of the CDCR. This is an additional change to the originally proposed text.

**Subsections 3044(d)(3)(D) through (e)(3)(B) are unchanged.**

**Subsection 3044(e)(3)(C) is amended.** To correctly reference the organization and authority structure of the CDCR, a non-substantive change to the text has been made by deleting the reference to the “Director” and replacing it with the “Secretary” of the CDCR. This is an additional change to the originally proposed text.

**Subsections 3044(e)(3)(D) through (f)(3)(A) are unchanged.**

**Subsection 3044(f)(3)(B) is amended.** To correctly reference the organization and authority structure of the CDCR, a non-substantive change to the text has been made by deleting the reference to the “Director” and replacing it with the “Secretary” of the CDCR. This is an additional change to the originally proposed text.

**Subsections 3044(f)(3)(C) and (D) are unchanged.**

**Existing subsection 3044(f)(3)(E) is deleted.** Because inmates no longer earn and accrue ETO, the language in this subsection concerning the accrual of ETO has been deleted.

**Existing subsection 3044(f)(3)(F) is renumbered to 3044(f)(3)(E) and is unchanged.**

**Subsections 3044(g) through (g)(4)(A) are unchanged.**

**Subsection 3044(g)(4)(B) is amended.** To correctly reference the organization and authority structure of the CDCR, a non-substantive change to the text has been made by deleting the reference to the “Director” and replacing it with the “Secretary” of the CDCR. This is an additional change to the originally proposed text.

**Subsections 3044(g)(4)(C) and (D) are unchanged.**

**Existing subsection 3044(g)(4)(E) is deleted.** Because inmates no longer earn and accrue ETO, the language in this subsection has been deleted.

**Existing subsection 3044(g)(4)(F) is renumbered to 3044(g)(4)(E) and is unchanged.**

**Subsections 3044(h) through (h)(3)(A) are unchanged.**

**Subsection 3044(h)(3)(B) is amended.** To correctly reference the organization and authority structure of the CDCR, a non-substantive change to the text has been made by deleting the reference to the “Director” and replacing it with the “Secretary” of the CDCR. This is an additional change to the originally proposed text.

**Subsections 3044(h)(3)(C) and (D) are unchanged.**

**Subsection 3044(h)(3)(E) is amended** to delete language concerning the accrual of ETO. In exchange, the reference to Section 3045.2, which correctly defines ETO, has been added.

**Subsections 3044(h)(3)(F) and (i) are unchanged.**

### **3045. Timekeeping and Reporting.**

**Subsection 3045(a) is amended** to update language concerning inmate timekeeping and reporting. Due to the elimination of the CDC

Form 191, Inmate Time Card, all references to this form have been deleted or replaced with, for easier reference and consistency, a “timekeeping log”. An authorized timekeeping log is now referenced in these regulations as the tool in which to record the daily attendance of each inmate assigned to a credit qualifying assignment. In addition, text from deleted Subsection 3045(b), which specified that the log shall be the reference for resolving inmate complaints or appeals and shall be retained at a secure location designated by the facility management, has been amended and relocated to this subsection.

**Subsection 3045(a)(1) is amended** by deleting the reference to the eliminated CDC Form 191.

**Subsection 3045(a)(1)(A) is amended** for consistency by deleting the words “each form” and replacing it with “the timekeeping log”. Also, because credits are no longer totaled on a daily basis, the text “for days credit” has been deleted.

**Subsections 3045(a)(1)(B) and (C) are amended** for consistency by deleting the word “form” and replacing it with “log.”

**Subsection 3045(a)(2) is amended** for consistency by deleting the word “card” and replacing it with “timekeeping log.”

**Existing subsection 3045(b) is repealed.** All specific references in these regulations to the eliminated CDC Form 191, the CDC Form 1697 or any other form used to record the daily attendance of an inmate assigned to a credit qualifying assignment, has been deleted and/or replaced with, for easier reference and consistency, a “timekeeping log.” As a result of this language change, and the fact there is sufficient language in other parts of these regulations covering the use of timekeeping logs, the text referencing CDC Form 1697, Inmate Work Supervisor’s Time Log, and the instruction on its use has been deleted from this subsection. Although it is no longer being specifically referenced in these regulations, the CDC Form 1697 is one of three forms/logs that are currently being used by the Department as an authorized timekeeping log. The others, CDC Form 151, Permanent Class Record Card, is primarily used by academic and vocational instructors, and the CDC Form 1690, Reception Center Timekeeping Log, is used for inmates in RCs who are undergoing processing or on layover status. In addition, text in this subsection specifying that the log shall be the reference for resolving inmate complaints or appeals concerning work credits, and shall be retained at a secure location designated by the facility for 12 months from date of completion, has been amended and relocated to subsection 3045(a).

**Existing subsection 3045(c) is renumbered to 3045(b) and amended** for consistency by deleting the reference to CDC Forms 191 and 1697, and changing the word “cards” and replacing it with “timekeeping” logs. In addition, to clarify security requirements, language has been amended to specify that inmates shall not have unauthorized access to any timekeeping logs.

### **3045.1 Timekeeping for Inmates in Administrative Segregation.**

**Subsection 3045.1(a) is unchanged.**

**Subsection 3045.1(a)(1) is amended** to delete language concerning the crediting of “S” time. This is necessary because inmates no longer earn or are credited “S” time. Also, for clarification, additional language has been added to specify that the inmate shall retain their work/training group status at the time of their placement in administrative segregation unless otherwise impacted by a classification or disciplinary action.

**Subsection 3045.1(a)(2) is unchanged.**

## **3045.2. Excused Time Off (ETO)**

**Subsection 3045.2(a) is amended** to update language concerning the use of ETO. For correction, work/training group A is changed to A-1, and for clarification, language referencing the accumulation of ETO is amended to reflect that an inmate may “use” ETO during approved absences from their assigned work/training assignment. This change is necessary because inmates no longer earn and accrue ETO, but instead may use ETO that is authorized. Also, the last sentence referencing the earning of ETO has been deleted.

**Existing subsection 3045.2(b) is deleted.** Because inmates no longer earn or accrue ETO, but instead may use approved ETO, the language in this subsection is now obsolete and has been deleted.

**Existing subsection 3045.2(c) is renumbered to 3045.2(b) and amended** for correction purposes by changing the minimum usage of ETO from two-hour increments to 15-minute increments. Also for correction, the reference of “shall utilize accrued” ETO has been deleted and replaced with “shall use” ETO.”

**Existing subsection 3045.2(d) is renumbered to 3045.2(c) and amended** for correction purposes by replacing the words “accumulated days” with “ETO”.

**Existing subsection 3045.2(e) is renumbered to 3045.2(d) and is amended.** To correctly reference the organization and authority structure of the CDCR, a non-substantive change in the text has been made by deleting the reference to the “Director” and replacing it with the “Secretary” of the CDCR. This is an additional change to the originally proposed text.

**Subsections 3045.2(d)(1) through (d)(6) are unchanged.**

**Existing subsection 3045.2(f) is deleted.** Because inmates no longer earn, accrue, or are credited ETO, the language concerning the accrual and maximum amount of ETO time for holidays worked has been deleted.

**Existing subsection 3045.2(g) is deleted** in order to remove obsolete language concerning the forfeiture of ETO.

**Existing subsections 3045.2(h) and (i) are renumbered to 3045(e) and (f) respectively and are unchanged.**

### **3045.3. “S” Time.**

**Subsection 3045.3(a) is amended** to clarify language concerning the credit earning status of an inmate while on security/sentence reducing “S” time. Because inmates do not earn or are credited “S” time, language has been amended to reflect that “S” time shall be noted on timekeeping documents for an authorized absence from the inmate’s work/training assignment, and that the inmate shall receive sentence-reducing credit commensurate with their designated work group. Also for clarification, additional language has been added to specify that inmates, who are removed from their work/training assignment for authorized reasons, shall retain their existing work/training group status unless otherwise impacted by a classification committee or disciplinary action.

**Subsection 3045.3(b) is amended** for correction purposes by deleting the word “credit” in the reference to “S” time.

**Subsection 3045.3(b)(4) is deleted.** With the amendments to both subsections 3045.1(a)(1) and 3045.3(a), which clarify the credit earning status of inmates who are removed from their work/training assignment, the language in this subsection is now redundant and has been deleted.

**Existing subsections 3045.3(b)(5), (b)(6), (b)(7), (b)(8), (b)(9), (b)(10), (b)(11), (b)(12), (b)(13), (b)(14), (b)(15), (b)(16), (b)(17), (b)(18), (b)(19), (b)(20), (b)(21), and (b)(22) are renumbered to 3045.3(b)(4), (b)(5), (b)(6), (b)(7), (b)(8), (b)(9), (b)(10), (b)(11), (b)(12), (b)(13), (b)(14), (b)(15), (b)(16), (b)(17), (b)(18), (b)(19), (b)(20), and (b)(21) respectively and are unchanged.**

**Existing subsection 3045.3(b)(23) is renumbered to 3045.3(b)(22) and is amended.** To correctly reference the organization and authority structure of the CDCR, a non-substantive change to the text has been made by deleting the reference to the “Director” and replacing it with the “Secretary” of the CDCR. This is an additional change to the originally proposed text.

### **3075. Initial Intake.**

**Subsections 3075(a) through (c) are unchanged.**

**Subsection 3075(d) is amended** to clarify language referencing inmate failure to comply with departmental grooming standards, and to also provide the correct section number when referencing the definition of program failure. Amended language will now specify that each inmate will be advised that failure to comply “with departmental grooming standards” may result in “the inmate being deemed” a program failure pursuant to section 3000.

### **ASSESSMENTS, MANDATES AND FISCAL IMPACT:**

This action will neither create nor eliminate jobs in the State of California, nor result in the elimination of existing businesses, or create or expand businesses in the State of California.

The Department determines this action imposes no mandates on local agencies or school districts; no fiscal effect on Federal funding to the State, or private persons. In addition, after Department of Finance review, the Department has determined that the estimated savings that were originally provided with these regulations, were incorrect. Instead, it has now been determined there will be no fiscal impact or savings on state or local government. It has also been determined that this action does not affect small businesses nor have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states because they are not affected by the internal management of State prisons; or on housing costs; and no costs or reimbursements to any local agency or school district within the meaning of Government Code Section 17561.

#### **DETERMINATION:**

The Department has determined that no alternative considered would be more effective in carrying out the purpose of this action or would be as effective and less burdensome to affected persons.

#### **PUBLIC COMMENTS TO ORIGINAL PROPOSED REGULATIONS:**

Public Hearing: Held November 7, 2005 at 9:00 a.m.

No one commented at the public hearing.

#### **SUMMARIES AND RESPONSES TO WRITTEN PUBLIC COMMENTS**

##### **COMMENTS #1:**

**Comment A:** Commenter states that inmates were finally provided with copies of the latest printed version of the California Code of Regulations, Title 15, updated through December 31, 2004, and that the meeting being held today (September 21, 2005), regards the proposed adoption of both new rules, and a clarification of those currently in place. Commenter says that if he correctly understands the numbering system of the Notice of Change to Regulations, this proposed regulation is the seventh modification since the last version of the Title 15 printing but questions why this is so and why are there so many arbitrary changes when the copies that were just delivered to the prison population are obsolete.

**Accommodation: None.**

**Response A:** Generally, every 12 months the Department prepares, prints and distributes an updated version of the Title 15, Division 3, regulations. The latest version which was delivered to the inmates in September 2005, included all updated and approved regulations through the date of December 31, 2004. This date represents a single point in time and is an accurate point of reference for the reader. To deliver an updated book, the commenter needs to understand that it takes on average, six to nine months in order to allow departmental staff enough time to adequately prepare, proof, print, ship, and distribute the

approximate 350,000 copies to the adult institutions. It is both physically and financially unrealistic to expect delivery of any additional Title 15 books with more recent updates within a 12 month period of time.

In response to the commenter's question of why there are so many arbitrary changes to the Title 15, the Department responds by saying that the regulatory approval process is ongoing. There are many reasons why regulations are proposed or amended, many of them due to a legal or legislative mandate, or a change in a departmental policy and/or procedure. Whatever the reason, when a regulation is amended/proposed, the Department complies with all notification requirements. The Department makes every reasonable attempt to post all Notice of Change to Regulations (NCR) so that every inmate has the opportunity to review and provide comment to a proposed regulation within the required minimum 45 day comment period. Although the most recent addition of the Title 15 book provided to the inmates only contains updates to December 31, 2004, all proposed regulations since that date have been noticed, printed and made available for inmate review. It is the Department's position that it is the responsibility of each inmate, if they so wish, to keep track of any additional proposed regulations since the last printing of the Title 15. In addition, NCR copies along with past and present copies of each Title 15 are available for inmate review in each institution law library.

**Comment B:** Commenter states that the previous two versions of Title 15, omitted the sections regarding parole, and noted that all sections had been repealed. Commenter asks why have these sections not either been updated or completely deleted, and the very least, the Department would save at least 700,000 sheets of paper, assuming that 175,000 copies were printed.

**Accommodation: None.**

**Response B:** Although the above comment/objection does regard an aspect or aspects of the subject proposed regulatory action or actions and must be summarized pursuant to Government Code Section 11346.9(b)(3), the comment/objection is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

**Comment C:** Commenter states that the notation on page 34, regarding Subsection 3075(d) is invalid and violates the First, Ninth, and Fourteenth Amendments to the United States Constitution; Article 1, Sections 1, 4, 15, and 24 of the California State Constitution; and has been deemed unconstitutional by the Ninth Circuit Court of Appeals in the *Warsoldier v Woodford* (Aug 1, 2005) case. Commenter also states the same issue is being heard before the United States District Court for the Eastern District of California (case number 05-CV-573 FCD DAD) as a Civil Rights complaint under 42 U.S.C. § 1983. Commenter questions why is it so important to utilize tactics that only intimidate, infuriate, and deny civil rights with such arbitrary regulations, and why does the department attempt to implement these regulations when they are contrary to established law. Commenter finishes this comment by asking if these people are "out-of-step" with the legality of what they propose, or do they



expect blind complacency from those that are being deprived of simple but sacred rights?

**Accommodation: None.**

**Response C:** The statement providing that Subsection 3075(d) is invalid and violates the First, Ninth, and Fourteenth Amendments to the United States Constitution, and Article 1, Sections 1, 4, 15, and 24 of the California State Constitution, is generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

Commenter has also stated that this Subsection has been deemed unconstitutional by the Ninth Circuit in the case of *Warsoldier v Woodford*. The Department disagrees with this statement. In the case of *Warsoldier v Woodford*, the U.S. 9<sup>th</sup> Court of Appeal for the 9<sup>th</sup> Circuit reversed a lower court decision from 2004 that denied Billy Soza Warsoldier's request to bar the Department's grooming policy from being applied to him in order to protect his religious beliefs. As a result of this lawsuit, and other lawsuits regarding the religious rights of inmates, the Department was ordered to comply with the Religious Land Use and Institutionalized Persons Act (RLUIPA), which provides that the government may not impose a substantial burden on an inmate's exercise of religion unless the regulation in question furthers a compelling state interest in the least restrictive manner. As a result of this, the Department has amended on an emergency basis, provisions governing inmate grooming standards and inmate religious programs. In this emergency package (Notice of Change to Regulations, #06-02), the California Code of Regulations (CCR), Sections 3000, 3062, 3075 and 3210 were amended to allow male and female inmates to maintain their hair at any length, and not to extend over the eyebrow or cover the inmate's face. The emergency regulations also were amended to define religious review committee, allow inmates a reasonable accommodation to attend a scheduled religious service, and to provide that these rules apply equally to both male and female inmates. This court ruling and subsequent emergency regulation package did not do away with departmental grooming standards, and did not include any additional regulatory changes to Subsection 3075(d), which is the Subsection that the Commenter has identified as being deemed unconstitutional. It is the Department's contention that the proposed amended language in Subsection 3075(d) does not conflict with any other CCR sections, or deny any inmate of any rights or due process, but instead, only clarifies vague language and provides the correct Section number when referencing the definition of program failure.

Concerning the other referenced court cases in this comment, the Department responds by saying that the California Supreme Court case was a habeas action, filed by the Commenter, and was denied on 11/16/05. The Eastern District of California case is still open, with no determination or decision, and will not be commented upon.

For a response to the remaining part of this comment, **see Commenter #1, Response B.**

**Comment D:** Commenter states that the Title 15 is out of date prior to receiving it and when an inmate files a grievance (disciplinary action or program issue), and cites Title 15, it is routine for the staff member assigned to only utilize Title 15 when it serves the needs of the staff. Commenter contends if a valid argument against the staff's action is made, they will cite the Department Operations Manual (DOM) which is only available in the Law Library which seats only 24 inmates, is open less than 30 hours per week, and supposedly serves the needs of over 3,500 inmates on two yards. Commenter states this is inherently prejudicial.

**Accommodation: None.**

**Response D: See Commenter #1, Response B.** Also, concerning the allegation that the Title 15 is out-of-date, **see Commenter #1, Response A.**

**Comment E:** Commenter contends that the most disconcerting problem with these amended regulations, involves the changes regarding credit earning for those with indeterminate sentences. Subsection 3043(a)(1), as amended, will give life prisoners more credit earning potential than those that are currently subjected to the 80% and 85% sentences. Commenter supports the release of most lifers but questions why they should receive more credits for time served than those with determinate sentences, and feels that if the department is going to provide relief for lifers, logic dictates that the same should be done for all classes of inmates. Commenter states that he is serving a 12 year sentence, at 85% and will not be eligible for parole until he has served 10 years, 2 months and that under the new proposal, a 15 year-to-life prisoner would be eligible for parole after serving 11 years, 3 months. He supports this change but it has to encompass all levels of sentence and those currently serving 80-85% should have their sentence reduced to 50-60%.

**Accommodation: None.**

**Response E:** The Commenter is incorrect and has provided a statement that goes beyond the scope of the amended text, which is the only text that is subject to comment. The Department contends that the only change to Subsection 3043(a)(1) was the addition of the text, "Except where otherwise prohibited by law", which was added for clarification and to remove any possible conflict with other existing laws. The amended text does not change the meaning of the current language already in place.

The Department also contends that inmates who are serving a determinate sentence for a crime either committed before or after January 1, 1983, have credit reduction possibilities, which are clearly spelled out in Subsections 3043(a) and 3043(c)(4). The commenter needs to understand though, that no matter the worktime credits that may be earned, some inmates who have been convicted of certain offenses, by statute, must serve a specified period of time prior to minimum parole eligibility.

**Comment F:** Commenter states that the primary issue that needs to be addressed by this meeting, the Legislature, and the Governor, is some valid accountability for where, how, and why the taxpayers money is being so improperly spent. Commenter also states that with the high level of recidivism, the California Department of Corrections and Rehabilitation is devoid of

adequate programs, medical care, or functional educational features, and that this is an insult to the English language, and that this is a fraudulent industry.

**Accommodation: None.**

**Response F: See Commenter #1, Response B.**

**COMMENTER #2:**

**Comment A:** Commenter is opposed to the proposed change to Section 3043.6(a)(3), which states that “Inmates who are day-for-day eligible per Penal Code Section (PC) 2933, shall be given priority for assignment. Reason he is opposed is because once an inmate’s release date is established for participation in “Bridging”, his/her release doesn’t change with any priority assignment.

**Accommodation: None.**

**Response A:** The Commenter’s stated reason for objection is confusing and unclear. It is the Department’s position that the amended text does not effect an inmate’s release date, but instead, only clarifies the criteria for placement on a receiving institution’s waiting list for an inmate who has been transferred for non-adverse reasons.

**Comment B:** Commenter is opposed to the proposed change to Section 3043.6(a)(4)(A), which is renumbered to 3043.6(a)(3)(A), and reads “who are day-for-day credit eligible”, and “Work Group A-2 inmates eligible to earn credits per PC Section 2933 shall be given priority for placement on waiting lists, and the inmate with the earliest release date shall be given first priority.” Reason for his opposition is that he feels there shouldn’t be any PC Section 2933 Work Group A-2 inmates because of bridging, and therefore A-1A, PC Section 2933 criteria should not be by release date priority for assignment. Commenter also states that many assignments (vocation/shops/computers) take specialized knowledge to gain entry, and placement of PC Section 2933 eligible inmates into assignments that their release date won’t allow completion, which would be fruitless and redundant.

**Accommodation: None.**

**Response B:** The Department contends that the Commenter has not provided any logical explanation that can justify his stated reasons for objection, which are unclear. Because of unclear nature of the statement, the Department cannot formulate a specific response in refutation of or accommodation to the comment. The Department can respond in general by saying that the amended regulations in Subsections 3043.6(a) through (a)(3)(D) only concern non-adverse transfer of inmates, and clarify the criteria for inmate placement on a receiving institutions waiting list in the event the inmate cannot be placed in a same or similar work/training program because the program is full or unavailable. Additionally, these regulations reference all available work/training programs, and not “Bridging” as stated by the Commenter. These regulations are clearly stated, are consistent with other sections, and will help to ensure that eligible inmates will maximize their credit earning and have the opportunity to participate in work assignments that will help prepare them for parole and a successful re-entry back into society.

**Comment C:** Commenter is opposed to the proposed change to Section 3043.6(a)(3)(B), which states “who are day-for-day credit eligible and are already designated Work Group A-1. Inmates eligible to earn credits per PC Section 2933 shall be given next priority for placement on waiting lists and the inmate with the earliest release date shall be given first priority.” Reason for his opposition is that incorporated by reference, reasons opposing comments I and II. Future parole violators would make up the majority of new A-1A assignments for limited periods of time that wouldn’t even complete two quarterly 101’s.

**Accommodation: None.**

**Response C: See Commenter #2, Responses A and B.**

**Comment D:** Commenter is opposed to amended Section 3043.6(a)(3)(C) because inmates in prison who are serving 80%/85% would have to wait longer to get A-1A status. Commenter feels that society should have an interest in making rehabilitative programs equally available to all inmates and that the prisons structure numerous activities (night yard/weekend yard/phone access) based on A-1A status.

**Accommodation: None.**

**Response D:** The Department contends there has been no evidence presented or explanation provided that can substantiate the stated objection. Concerning the second part of the comment, the Department currently makes every reasonable effort to provide each inmate with a work/training, education, or other such program. The regulations in Title 15, Section 3040 provides that every able-bodied person committed to the Department is obligated to work as assigned and may be to a full day of work, education, or other program activity or a combination of each, with a classification committee assigning each inmate to an appropriate program based on the inmate’s needs/desires, eligibility, program availability, security, operational needs, and the safety of persons and the general public. In addition, an inmate’s behavior is also a factor that can effect his/her placement in a work group or work/training program.

**Comment E:** Commenter is opposed to amended Section 3043.6(a)(3)(D) because if the department is going to create a new category of inmates for the purpose of Inmate Work/Training Incentive Program (IW/TIP) assignment priority, the department should first make sure that all inmates have the same opportunity to work. Unassigned work group A-2, non PC Section 2933 eligible inmates would be further delayed in IW/TIP assignments.

**Accommodation: None.**

**Response E: See Commenter #2, Responses B and D.**

**Comment F:** Commenter contends that giving PC Section 2933 eligible inmates priority in IW/TIP is unnecessary and unless a PC Section inmate is in fire-camp, due to “bridging project” being applicable, he is already earning PC Section 2933 credits (day-for-day). Any job assignment can provide this credit and giving priority on assignments to PC Section 2933 inmates impairs contracts inmates other than PC Section 2933 eligible had in their agreements. The laws in affect at time of plea bargains attached to plea contract.

**Accommodation: None.**

**Response F: See Commenter #2, Responses B and D.** The Department also contends that the Commenter's reference to fire camp is incorrect. Inmates who are assigned to a fire camp, will be Work Group F, which is two-for-one credit earning. Bridging Education Programs are a Work Group A-1 assignment, which is day-for-day credit earning.

**Comment G:** Commenter states that CDCR's statistical evidence show over 80,000 parole violators returning 1998-2000. Presuming 50% of parole violators can earn half-time (unless excepted under PC Section 3057), mainline prisoners limited to 80%/85% of term (20%, 15% credits) will not be able to participate in IW/TIP programs equally.

**Accommodation: None.**

**Response G: See Commenter #2, Responses B and D.**

**Comment H:** Commenter states that a PC Section 2933 eligible inmate can just as easily earn time for waiting for an IW/TIP as all other similarly situated inmates. Example of two prisoners, one with 8 years at PC 2933, and the other with 5 years at 80%. Both serve the same time in county jail and the same time at reception. Who goes home earlier? Who gets assigned to IW/TIP first? This substantiates that the person on the waiting list first should have priority, without the credit earning status being a factor. In addition, there are not enough IW/TIP assignments for all interested inmates to acquire A1-A status, therefore if work is a privilege, and not a right (PC Section 2933), then privileges would not be equally available under Section 3044(c)(5) with PC Section 2933 inmates getting assigned to programs before other inmates.

**Accommodation: None.**

**Response H: See Commenter #2, Responses B and D.** The Department also contends that the concept of the Bridging Education Program regulations is to identify all inmates who are eligible to earn day-for-day credits pursuant to PC Section 2993, and place them into assignments that will allow them to immediately start earning work time credits.

### **COMMENTER #3:**

**Comment A:** Commenter states that the deletion of Section 3043.4(b) removes the ability of the teacher to effectively discipline the inmate/student and without the threat of the inmate losing their work time credit, there is less incentive for the inmate/student to attend class. Commenter also states that this deletion means that the inmate/student will get credit no matter what, once they are in workgroup 1-A and questions what does it take for the inmate to lose their earning status.

**Accommodation: None.**

**Response A:** The Department contends that the commenter is incorrect. This subsection was deleted to remove incorrect language concerning denied worktime credit for absent days, and also because it was in conflict with current procedures and regulations. There are regulations currently in place that clearly spell out the performance expectation of inmates, inmate discipline, disciplinary

hearings, and classification committee actions that may affect the credit earning or work group classification of inmates.

**Comment B:** Commenter states that in Sections 3043.5(e)(2)(B)(1) and (e)(2)(B)(2), the language is being deleted because inmates no longer accrue E-time, however in Section 3043.5(e)(2)(D) it is stated that the inmate will use E-time that is authorized. Authorized by whom? Commenter states this is very unclear because later in Section 3045.2, the change again says ETO is no longer accrued, but the work supervisor can authorize it in 15 minute increments, therefore there is no such thing as E-time. Commenter questions if an inmate claims they are sick and they don't come to class, and they are not authorized to use ETO time by their supervisors, then what happens? The inmate will get credit, even if the work supervisor doesn't authorize the use of ETO time that they don't really have.

**Accommodation:** None.

**Response B:** The Department contends that the amended regulations clearly spell out that Excused Time Off (ETO) is now authorized and not earned, and as provided in renumbered Subsection 3045.2(b), authorized by the work supervisor/employer in no less than 15-minute increments. The authorized uses of ETO are provided in renumbered Subsection 3045.2(d). In response to the question if an inmate claims they are sick and do not come to class, and are not authorized ETO, **See Response A above.**

**Comment C:** Commenter states that in Section 3044(b)(2), there is a change in the work day to 6.5 hours or 32 hours weekly, and it is stated this is a clarification. Commenter questions what is the resource that makes this a clarification?

**Accommodation:** None.

**Response C:** As stated in the Initial Statement of Reasons, the revisions that change the the work day from 6 to 6.5 hours, and the work week from 30 to 32 hours were for correction, not clarification. These changes reflect the correct work hours and work week.